

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA ex rel.
CORI RIGSBY and KERRI RIGSBY

RELATORS/COUNTER-DEFENDANTS

v.

CASE NO. 1:06cv433-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY DEFENDANT/COUNTER-PLAINTIFF

and

FORENSIC ANALYSIS ENGINEERING CORPORATION;
HAAG ENGINEERING CO.; and ALEXIS KING

DEFENDANTS

**STATE FARM'S MOTION TO EXCLUDE
THE RIGSBYS' EXPERT WITNESS JOHN A. FOWLER, P.E.**

1. State Farm Fire and Casualty Company respectfully submits this motion, pursuant to Fed. R. Evid. 104(a), 702, 703, 401, 402, 403, Fed. R. Civ. P. 26(a)(2)(B), 37(c)(1), and Miss. Unif. Dist. Ct. R. 26(A)(2) (formerly 26.1(A)(2)), to exclude the testimony of the Rigsbys' expert witness, John A. Fowler, P.E.

2. The Rigsbys proffer the expert testimony of Mr. Fowler, an engineer who has never inspected and has no opinion concerning the McIntosh house.

3. Mr. Fowler's opinion is neither probative nor sufficient to inform whether the McIntosh flood claim was knowingly false at the time it was made. *See* 31 U.S.C. § 3729. His opinion is immaterial, particularly in light of Kerri Rigsby's dispositive admissions that she thought there was at least \$250,000 in flood damage to the McIntosh house and that she "absolutely" "believed it" "in good faith."

4. Mr. Fowler's opinion is otherwise inadmissible because it has no "fit" with the facts and claims at stake in this case. Not one word of his report addresses the McIntosh house or flood claim.

Instead, his report addresses an entirely different subject: the Mucha house. This Court need not go any further to exclude his testimony, particularly in light of this Court's repeated holdings that the "[t]he trial of this action will be limited to the McIntosh claim," ([363] at 1), and that "I will limit the presentation of evidence in this action to facts relevant to the McIntosh claim." ([343] at 10.)

5. Nor is Mr. Fowler's opinion about the Mucha probative of the damage to the McIntosh house. Mr. Fowler admits that damage to one house has "no significance" when assessing damage to another house, even when adjacent. So, too, this Court has repeatedly held in Hurricane Katrina cases that the damage to each house is unique because the forces exerted by the storm, the effects of those forces, and the extent of the damage all varied substantially from house to house. The damages to the Mucha and McIntosh houses varied greatly. Mr. Fowler's opinion as to the Mucha house is not helpful – and, indeed, would be confusing – in assessing the McIntosh house.

6. Mr. Fowler's opinions on meteorology, which he proffers as part of his opinion on the Mucha house, are beyond his expertise.

7. For the reasons set forth herein and in the accompanying memorandum of law submitted herewith and incorporated herein by reference, State Farm respectfully urges this Court to grant its motion and exclude Mr. Fowler's testimony in its entirety.

8. The following Exhibits are made a part of this motion:

- (A) Attached hereto as Exhibit A is a true and correct copy of excerpts from the hearing on May 20-22, 2009.
- (B) Attached hereto as Exhibit B is a true and correct copy of excerpts from the transcript of the June 20, 2007 deposition of Kerri Rigsby in *Marion v. State Farm Fire & Casualty Co.*, No. 1:06CV969-LTS-RHW (S.D. Miss.).

- (C) Attached hereto as Exhibit C is a true and correct copy of excerpts from the transcript of the June 3, 2010 deposition of Mr. Fowler.
- (D) Attached hereto as Exhibit D is a true and correct copy of excerpts from the transcript of the May 4, 2010 deposition of Linda Mucha.
- (E) Attached hereto as Exhibit E is a true and correct copy of excerpts from the transcript of the April 7, 2010 deposition of Kacie Denny.
- (F) Attached hereto as Exhibit F is a true and correct copy of excerpts from the transcript of the April 7, 2010 deposition of Mendy Briscoe.
- (G) Attached hereto as Exhibit G is a true and correct copy of excerpts from the transcript of the May 1, 2007 deposition of Kerri Rigsby in *McIntosh v. State Farm Fire & Casualty Co.*, No. 1:06-cv-1080-LTS-RHW (S.D. Miss.).
- (H) Attached hereto as Exhibit H is a true and correct copy of excerpts from the transcript of the April 27, 2010 deposition of Cody Perry.
- (I) Attached hereto as Exhibit I is a true and correct copy of excerpts from the transcript of the June 29, 2010 deposition of Brian Ford.
- (J) Attached hereto as Exhibit J is a true and correct copy of excerpts from the transcript of the May 6, 2009 deposition of Jack Kelly.
- (K) Attached hereto as Exhibit K is a true and correct copy of excerpts from the transcript of April 9, 2010 deposition of Robert McVadon.
- (L) Attached hereto as Exhibit L is a true and correct copy of excerpts from the transcript of the May 5, 2010 deposition of Thomas McIntosh.

This the 26th day of July, 2010.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY COMPANY

By: /s/ E. Barney Robinson III (MSB #09432)
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CERTIFICATE OF SERVICE

I, E. Barney Robinson III, one of the attorneys for State Farm Fire and Casualty Company, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means directed by the Court's Electronic Filing System:

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This the 26th day of July, 2010.

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